CONFEDERATION FOR
THE TWENTY-FIRST CENTURY

A
BACKGROUND
DISCUSSION PAPER

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A Background Discussion Paper

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Preface

Many British Columbians and Canadians would no doubt prefer to set aside constitutional issues in the aftermath of the failure of the Meech Lake Accord in June 1990. Economic issues, and issues of national and international security, are seen by many as infinitely more important — especially in view of the onset of recession and the recent war in the Middle East.

But the reality is that questions of constitutional reform, indeed the very continuation of the Canadian federation in its present form, will dominate the public agenda in Canada in the coming months, as Canadians begin to participate more actively in a fundamental reassessment of Canadian federalism. Canada is about to embark on a discussion about its constitutional future — a discussion more critical than any we have gone through in the past.

While the prospect of such rethinking has given rise to concern and unease among many, others argue that a constructive and positive reappraisal of Canadian federalism can be viewed as an opportunity to address current problems and make improvements to a country already among the world's most fortunate.

If the task of reappraisal is approached with imagination, determination and generosity of spirit, we can emerge from the fast-approaching period of reflection with a form of government and society better equipped to face the challenges of an increasingly globalized, competitive world economy as we enter the twenty-first century.

The Consultative Process

Re-examining the future of our country and the role British Columbia should play in it requires a thorough, informed and thoughtful assessment of a wide range of complex issues. Self-assessment by British Columbians is basic to that undertaking.

To facilitate reflection, the Government of British Columbia, under the auspices of the Cabinet Committee on Confederation, has asked a number of British Columbians from various walks of life to prepare papers outlining their perspectives on the shape of our future. These papers will be given widespread distribution to assist British Columbians in forming their own conclusions on the issues involved. The Government is inviting public comments on such questions — as well as on any other related issues citizens believe to be important in this context.

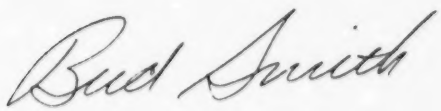
As a first step, the Cabinet Committee has asked that Government officials put together this discussion paper to help British Columbians familiarize themselves with some of the background information and factors which seem relevant to a consideration of these matters. This is done because of the Government's desire to encourage British Columbians to provide their views directly to the Government on the overriding issue of defining what Canada should be like as we enter the twenty-first century.

The attached paper does not purport to be exhaustive or definitive — it is simply a staff paper providing background information, in the hope that British Columbians will find it helpful in articulating their own thoughts on these issues. Nor does the paper make any attempt to draw specific conclusions as to a preferred appropriate option for change to our system of government. This would be inap-

propriate given the status of this document as a technical background paper prepared by Government officials, and given the decision of the Government to listen to the views of British Columbians before defining a formal position. This position, once taken, will reflect the views and aspirations of British Columbians concerning the kind of Canada we want to live in as we approach the next century.

On behalf of the Cabinet Committee, I would therefore invite all British Columbians to express their views on the issues involved, by writing to:

Cabinet Committee on Confederation
Parliament Buildings
Victoria, British Columbia
V8V 1X4



Honourable Bud Smith, Q.C.
Chairman
Cabinet Committee on Confederation

Federalism, Past and Present

Federalism: What Is It?

A federal state is described by Peter Hogg, one of Canada's pre-eminent constitutional scholars, as one where:

> "governmental power is distributed between a central (or national or federal) authority and several regional (or provincial or state) authorities, in such a way that every individual in the state is subject to the law of two authorities, the central authority and the regional authority. . . . The central and the regional authorities are 'coordinate', that is to say neither is subordinate to the other."

In a federal system, each order or level of government is assigned jurisdiction over certain matters by the Constitution, and exercises independent law-making authority pursuant to that division of powers. Neither order of government has superiority over the other. Subject to constitutionally protected rights and freedoms, each order of government is supreme or sovereign within its sphere of powers.

Broadly speaking, this type of system has suited the Canadian situation very well, given the huge land mass and different characteristics of Canada's regions. Federalism aims at achieving a satisfactory balance between the desire, on the one hand, to provide for clear direction with respect to matters requiring some form of central control, and the need, on the other hand, to ensure sufficient flexibility to better reflect and adapt to more specific regional circumstances and realities.

Many other nations have federal political systems. Some, such as Australia, have adopted a model similar to Canada's, but Canada was the first to combine federalism with British-type parliamentary institutions.

Canadian Federalism: A Thumbnail Sketch

Federalism began in Canada with the passage of the British North America Act, 1867. The Canadian model gave comparatively strong powers to the national government while building in recognition of unique social and cultural differences of the two founding European linguistic groups. In the years leading up to 1867, there had been a number of forces driving the Fathers of Confederation to come to some agreement over a workable system of government. There were political reasons — a unitary form of government in what is now Ontario and Québec had existed since 1840 and was no longer working. With the American Civil War raging to the south and Canada's desire to develop its west in advance of further American expansion, there were security reasons. The Reciprocity Treaty, which allowed Canada to trade with United States markets without tariffs, had expired, creating strong economic reasons.

The division of powers established in the British North America Act in 1867 gave the federal government control over defence, trade, and other national concerns. The powers granted to Ottawa included a list of some twenty-nine specifically enumerated powers as well as a more general grant to "make laws for the peace, order, and good government of Canada". The provincial powers were enumerated as sixteen specific areas of jurisdiction. These powers included what were at the time believed to be essentially less important and/or minor fields, for example matters of a "merely" local or private nature. However, the provincial powers over "property and civil rights", and "matters of a local or private nature" were to become the bases for significantly expanded provincial authority over certain areas.

As is so often the case, the written constitution over time ceased to reflect reality. Through the evolution of public sector activities and judicial interpretation, the watertight compartments of 1867 came less and less to be an accurate reflection of the Canadian federation. New areas emerged, unthought of at the time of Confederation. Over the decades, the country experienced the parallel, and sometimes competing, processes of nation-building and province-building.

The Depression of the 1930s and World War II led to a high degree of centralization of power in Ottawa. Following the War, creation of the institutions making up the "welfare state" vastly expanded the scope of governmental activity at both the federal and provincial levels. By the 1960s, both levels of government were doing far more than they were in 1867 in managing the economy and operating large social programs. Not surprisingly, the greater role of both governments created areas of overlap and subsequent friction at times.

Over our history, there have been repeated attempts to find an acceptable way to redefine the basic jurisdictional or fiscal rules of Canadian federalism in the face of such changes. The Rowell-Sirois Commission of 1937 was mandated to re-examine the economic and financial basis of Confederation in the face of the financial crises posed by the Depression. The Québec Royal Commission of Inquiry on Constitutional Problems in 1956, and the Royal Commission on Bilingualism and Biculturalism in 1963, proposed revisions of the Constitution in the direction of greater provincial autonomy. The intensive constitutional discussions through the 1970s eventually led to the patriation of the Constitution and the Canadian Charter of Rights and Freedoms in 1982. The Macdonald Royal Commission Report on the Economic Union and Development Prospects for Canada, in 1985, recommended major changes to the institutions that shape our economies and social climate.

Despite all the changes and challenges, we should not lose sight of the fact that the federal system has served Canadians well — the growth, prosperity, security, freedom and relative stability we enjoy is the envy of much of the world. And federalism as a form of government has become, by the late 20th Century, quite a common and durable model in many parts of the world, largely because of its ability to balance the need for adequate central authority with the desire to reflect regional diversity.

The fact that few other systems of government have survived as long tells us something about federalism's utility and adaptability. The fact that the constitutional arrangements of most countries have been subject to fundamental overhaul much more recently than Canada's should serve to put the current pressure to change within a broader historic context.

Current Status of Constitutional Discussions

It is easy to forget that, when the Meech Lake Accord was agreed to in June 1987, it enjoyed very widespread initial support among the political leadership of all national parties and among the public in all regions of the country.

This support was in part sparked by the belief that three decades of debate on the question of "what does Québec want" had been brought to a mutually acceptable resolution through the vehicle of the Accord. The promise of "renewed federalism" made to Quebeckers in the context of the 1980 referendum debate — a promise which in the view of many Quebeckers had been broken by the results of the 1981-82 repatriation package (supported by all provincial governments except Québec) — was believed by many Canadians to have finally been fulfilled through the Accord.

Over the ensuing three years, as governments changed in some provinces, and as public opinion shifted in response to arguments about the potential implications of the Accord, this early consensus broke down dramatically.

Collapse of support for the Accord among English-speaking Canadians resulted from a number of factors — and exposed deep rifts among Canadians over fundamental issues.

For some, Québec was being given "too much". For others, the Accord represented too great a degree of decentralization of authority to all the provinces. Québec's use of the "notwithstanding" clause to block Charter challenges to its 1988 "sign law" was a flash point for opposition to Meech Lake in many parts of English-speaking Canada, even though the two issues were not formally linked. For still others, the Accord was seen as a threat to women's rights, or as undermining the federal government's ability to support less well-off regions, or as unacceptably incomplete in not addressing other important issues such as aboriginal rights.

Whatever the particular reasons of substance, there was also very wide support for the view that the Accord was illegitimate — in the sense that it had not been arrived at through a process involving sufficient public discussion and input, and that, once arrived at by First Ministers, it was "carved in stone" with no real opportunity for change or improvement being allowed.

In the aftermath of the events of last June, public opinion in Québec — according to the polls — took a dramatic swing in favour of so-called "sovereignty" options. Many Quebeckers saw objections to the Accord in other parts of Canada as rejection of Québec, and as a "humiliation". The Québec Government established the Bélanger-Campeau Commission on the Political and Constitutional Future of Québec, whose report is due to be released by the end of March.

Other provinces and the federal government have also established processes to examine the issues and options we will have to deal with in the coming months and years. Much of the debate will be defined by the recurring issues referred to earlier, especially in light of the intensive debate underway for months now in Québec. Many other Canadians see the need to address fundamental issues of governance in Canada from other perspectives as well — in view of the enormous and growing federal debt, in view of the need to respond to international competitiveness and in light of concerns regarding aboriginal rights, the environment, and the rights of women and minorities.

Against this backdrop, British Columbians and Canadians have a choice: ignore the debate and hope it goes away; resign ourselves to continued internal divisions perhaps leading to break up of the country; or accept the situation as a challenge and use it as a constructive opportunity to review our situation and our arrangements. On this last approach, if we view the current situation as an opportunity, we can make Canada a better place for present and future generations — providing Canadians with the renewed structures necessary to face up to national and international challenges.

This paper will now turn to a brief examination of some of the forces and factors that weigh heavily in determining the realistic options British Columbians may want to consider.

Canada In the World: The Globalization Phenomenon

In recent years profound changes have been occurring in the world around us, and these global changes will undoubtedly shape future discussions on constitutional changes here in Canada.

Global and North American economic forces have always had major impacts on the evolution of the Canadian political economy, especially as they interact with the different regional economies. A number of recent tendencies with important implications for future constitutional developments may be identified.

Efforts have been made over recent decades to ease access to international markets and bring down barriers to international trade. Increasingly the well-being of Canadians depends on exports of goods and services to other countries, rather than on economic or trade links among the regions within Canada. In addition, different parts of Canada have different trade patterns. British Columbia trades as much with the Pacific Rim as with the United States, whereas other parts of Canada are much more dependent on American markets, for example. These differences have increased the difficulty of developing and sustaining a single set of "national" policies responsive to varying regional concerns or needs. They have also increased the desire in the regions to exert more influence over national policies governing monetary policy, trade and tariff policy, or transportation policy, to name a few.

Much of the economic rationale for Confederation was based on the desire to create an east-west economy in Canada. That rationale now has less significance because of differences in regional economies, among other factors. The questions then are: can and should that situation be changed (by bringing down interprovincial trade barriers, for example); what other rationales for federal economic union exist; and are changes in the division of powers required to correct problems and advance mutual objectives?

While globalization is primarily economic in nature, it also has social, political and environmental dimensions. Environmental concerns are increasingly being recognized as a global challenge. For instance, international commitment would be required to resolve global warming — which transcends local, provincial and national boundaries.

The telecommunications revolution, another dimension of globalization, has encouraged the development of a more active and informed populace, permanently altering the relationship between citizens and the state. International organizations are becoming more and more common on the environmental and human rights fronts. The new information technology has, in effect, "empowered" the public at large and led to increasing demands for greater public input into government decision-making.

Globalization is seen by some as increasing the significance of differences among regional interests and as diminishing the effective role of the federal government. This is because international forces — such as the General Agreement on Tariffs and Trade,the Canada-United States Free Trade Agreement, or the international mobility of private capital — have the effect of limiting the scope of federal policy more than provincial activities. In addition, some argue that, in this context, matters principally within provincial jurisdiction, like education, infrastructure and land use policy, will be more significant as tools for promoting economic development. The increased level of activity by provinces and large cities

Figure 1 shows British Columbia's domestic (Rest of Canada) and international (Rest of World) trade. It displays a picture of both change and constancy. On one hand, exports to the Rest of Canada (ROC) have held steady at 7-9% of GDP, while exports to the Rest of World (ROW) have swung in a wide band of 20-30% of GDP. These swings follow such things as commodity prices and do not show a tendency to either consistent expansion or contraction.

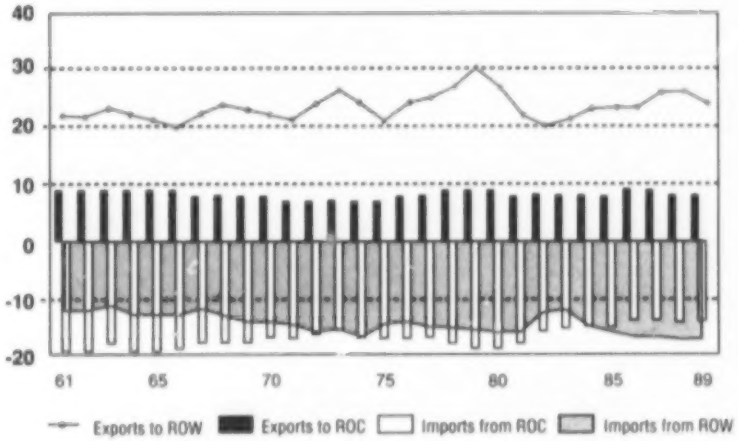
In contrast to the lack of trend in exports, the pattern of imports does show a change. With the exception of the deep recession of the early eighties, there has been a slow but steady increase in international imports. In contrast, imports from the ROC have stayed in a fairly narrow band until the recession, when they contracted. Unlike international imports, however, domestic imports did not recover but remained low. British Columbia now consistently imports more from other countries than from other provinces.

In summary, British Columbia has traditionally run a trade deficit with the Rest of Canada, paid for with the very large surpluses from trade with the Rest of World. While trends in exports have changed little, there has been a change in imports. British Columbians buy more goods from abroad and less from the Rest of Canada. The economy is becoming more international, and less linked to the Canadian economy.

The second figure shows the changes in the destination of international exports over the last decade. British Columbia is turning beyond North America by increasing Pacific Rim trade and even regaining ground in an old market, Europe. This is in stark contrast with overall Canadian patterns, where reliance on American markets is much greater.

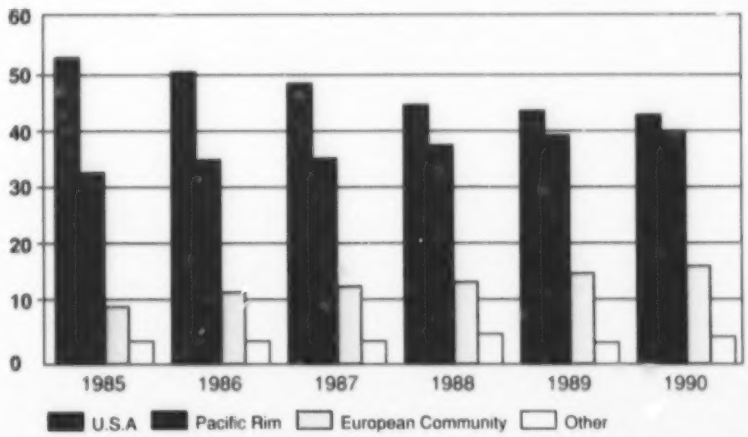
British Columbia's Changing Trade Patterns: Looking Outwards

Figure 1



British Columbia's Exports 1985 - 90

Figure 2



Source: Statistics Canada
Prepared by: BC Stats

in the international arena in recent years is evidence in support of this general analysis. Does this trend also imply the need for more decentralization within the federal system?

Not everyone agrees with this analysis. The contrary view suggests that the implications of globalization may in fact be centralizing. What influence Canada does have internationally, it is suggested, results from the fact that we are — collectively — the world's eighth largest economy, despite our small population. It can be argued that if Canada is to participate effectively in the global economic environment, it must speak with one clear voice in global arenas. In addition, some maintain that a strong federal role is required to promote necessary economic adjustment in the Canadian economy and, in so doing, act as a breakwater against the internally fragmenting effects of global forces. On this view, it may be asked whether increased global competitiveness requires an even greater federal role in equalization or in cushioning the regional impacts and resulting social tensions of globalization.

While the answers may not be clear, what is apparent is that any reconsideration of federal arrangements must focus on the economic rationale and purpose of both federal and provincial governments, and that any consideration of a new division of powers must take into account the impact of the global economy on Canada.

The last section spoke briefly of the undoubted influence of Canada's dependence, as a trading nation, on the changing international economic context in shaping our options for the future. More generally, as Canada and British Columbia enter the last decade of this century, there can be little doubt we are experiencing a rate of change unprecedented since the end of World War II. These changes must be examined for their implications for the fiscal, economic, social and cultural context which in turn governs Canada's constitutional future. The particular impact of those changes on British Columbia, and how those changes may affect us differently from other parts of Canada, should be considered in weighing alternatives for change.

The Fiscal Context - Impact of Federal Debt on British Columbia

Thirty-six cents of every Canadian's — including every British Columbian's — federal tax dollar is paid towards the interest on our nearly $400 billion national debt, which is made up of annual federal deficits that have accumulated over past years. That compares with four cents on every tax dollar for interest on British Columbia's $4.1 billion provincial debt. Besides making each federal tax dollar effectively worth 64 cents because of the need to pay off past loans, the national debt hurts the economy by contributing to higher interest rates and therefore a higher dollar, thus decreasing Canada's and British Columbia's international competitiveness on the global market.

The federal debt can be attributed to many factors, some of which seem embedded within the very essence of the federal system as currently structured. As mentioned earlier, both orders of government have become involved over the past number of decades in the provision of services in similar fields. Economic development, health, science and technology and the environment are but a few examples. The potential for overlap and duplication in such fields can lead to wasted money and reduced efficiency and effectiveness.

Many have argued that such overlaps have resulted from the way powers are divided between the two levels of government. This division of powers, determined in 1867, does not necessarily reflect the modern realities to which government must respond. Confusion over responsibilities, according to this argument, has reduced accountability as well as effectiveness, and such confusion should be eliminated where possible by clearly reassigning powers to one order of government or the other. Others point out that this is not possible in all fields, since there is both a local and a more general interest in some questions. In such areas, more coordination may be required to ensure effectiveness, efficiency and accountability.

Whatever means may be considered, there does seem to be widespread agreement that bold steps must be taken to address the deficit and the debt. If we do not, the costs of servicing this debt may otherwise continue to grow so large that they hamstring the ability of government at either level to continue to pay for existing programs, much less respond to new challenges.

The only approaches to solving this problem entail either program cuts, revenue increases, or some combination of the two. Such decisions pose difficult and painful choices, and the most appropriate and acceptable mix between them can also be a matter of heated debate — especially in times of economic slowdown.

Public discussion has become more focussed of late on other legal or constitutional ways to address the problem of public sector debt — through statutory limits on governments' powers to spend, tax, or run deficits, for example. Essential to such discussions is consideration of the whole array of "transfer payments" for such programs as health care, post-secondary education, income assistance, and equalization payments to the less wealthy provinces — which together make up the core of our system of "fiscal federalism".

Issues related to fiscal federalism, including the division of taxing authorities between federal and provincial governments, have long been a key topic of discussion among Ministers and officials. These issues promise to become the subject of more general consideration among citizens as we address the question of national values, the programs that embody many of those values, and the apparent gap between public expectations of government and the ability of government and taxpayers to pay for programs to meet those expectations.

The Economic Context

1) Regional Responsiveness of Economic Policy

Canada's economy is often viewed as a system of regional economies which tend to have different priorities, and which perform in ways that can offset each other over time. An example is the effect interest rates set to combat inflation in central Canada in the late 1980s had on the investment and growth of the resource economies in Western Canada in general and British Columbia in particular. There has been debate about whether the federal government's mechanisms for setting monetary and economic policy, such as the Bank of Canada, are sensitive enough to regional interests. More generally, some question the extent to which one national economic policy can reflect and reconcile the conflicting priorities of a number of regional economies. This dilemma has led to calls for more authority or influence to be given to the regions in the development of economic policies which better reflect their particular interests.

2) Interprovincial Trade and Trade Barriers

One of the primary reasons for Confederation in 1867 was to establish a larger market across all of the provinces in which goods, services, labour and capital could move freely.

Over time, however, governments at either level have adopted policies or measures in areas such as employment policies and government purchasing aimed at stimulating economic growth within a province. Some of these initiatives — which now appear to be inconsistent in the context of an increasingly globalized economy — inadvertently had the effect of dampening interprovincial trade. Recent initiatives, both at the national level and among the Western provinces, have tried to address this problem. The slow pace of such change, however, has led to calls for further action to be taken, perhaps to the extent of making constitutional changes to ensure full free trade between provinces.

The Social and Cultural Context - Demographic Trends

The rapid changes that British Columbia has been experiencing are not confined to the political and economic arenas. British Columbia has undergone a profound and fundamental change in its demographic composition, namely with respect to its age structure and the increasingly multicultural origins of its population.

The most important change in British Columbia's and Canada's populations is that they are growing older. In British Columbia, between 1989 and 2016, the typical or median age of the population will have increased from 34.2 to 41.2 years. The population of the mature labour force (45-54 years) will

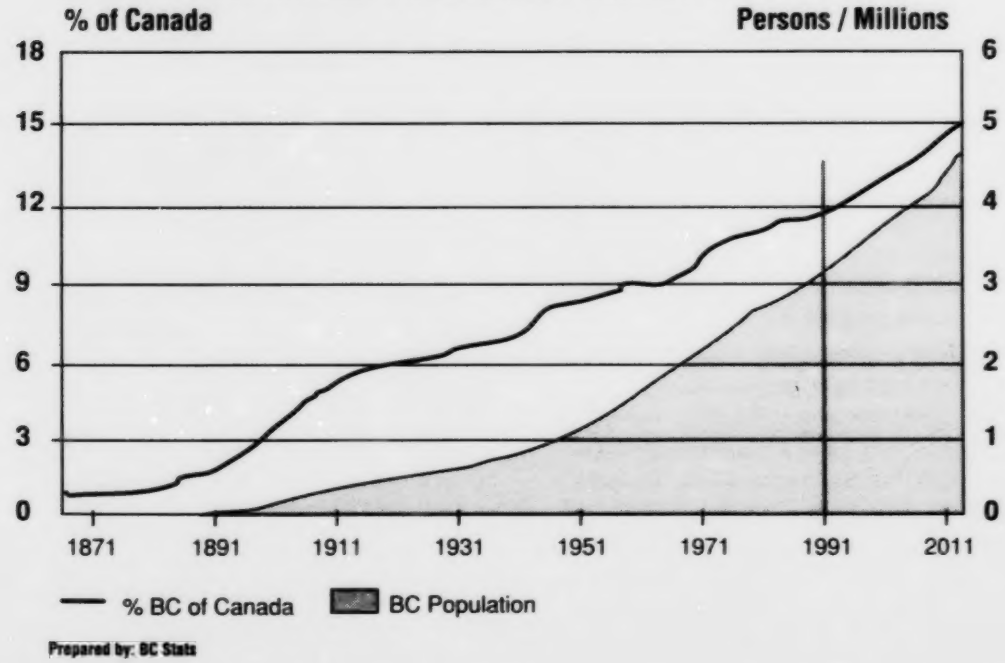
increase significantly in the next twenty years. Furthermore, the proportion of the population over 65 years will increase from the present 13% to 18% in 2016. This trend will increase cost pressures on such programs as health care — again raising questions of affordability, and the appropriate sharing of cost responsibilities among Canadians.

Immigration, both from other countries and from other parts of Canada, has always been and will remain an important factor in British Columbia. The origin of immigrants to British Columbia has changed considerably in recent years. Historically, the vast majority (70-75%) of British Columbia's immigrants came from the United States and Europe. Over the last 10 to 15 years, however, there has been a significant increase in the proportion of immigrants coming from Pacific Rim countries.

Immigration increases the entrepreneurial vigour of British Columbia's economy and enhances the rich multicultural diversity of British Columbian and thus Canadian society. At the same time, the changing pattern of immigration has increased the need for such programs as English as a Second Language training in our school system and for adults. Because of the significant impact of immigration on economic and social programs and priorities, several provinces, including British Columbia, have expressed a desire to be more fully involved in immigration policy decisions — an area of concurrent jurisdiction formally under the Constitution, but one in which most provinces have not to date played a very active role.

Another implication of these demographic trends is that the underlying image of Canada as a nation founded by two European cultural

British Columbia's Share of Canadian Population 1897 - 2016



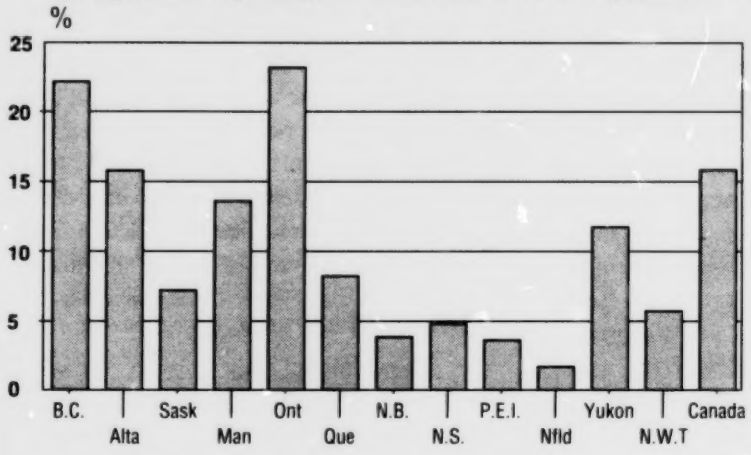
Prepared by: BC Stats

British Columbia has grown. Not only have we passed the 3,000,000 mark, we have also steadily increased our share of the nation's population. This shift in British Columbia's share makes clear the need to rethink assumptions about the way some of the country's institutions work – assumptions based on century-old population distributions.

British Columbia has always attracted people. It is, for example, the only province in which a majority of the population was born elsewhere, either in other provinces or abroad. British Columbia and Ontario lead all other provinces in the proportion of their population which is foreign born.

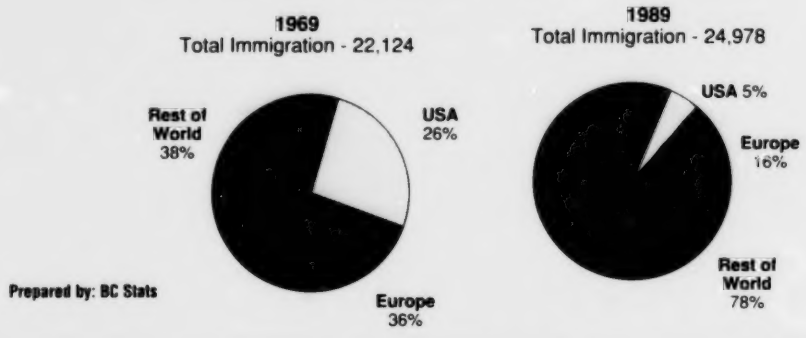
While British Columbia's immigrant population has always been large, its composition has changed in recent years. Increasingly diverse sources of immigration have been attracted to British Columbia. This has, in turn, made our society more diverse, creating new opportunities and also increased tasks for government.

Foreign Born Population as a Percent of Total Population - 1986



Prepared by: BC Stats

British Columbia Immigration By Selected Source



Prepared by: BC Stats

and linguistic groups — the French and the English -- appears less and less to reflect the reality of life in many parts of Canada, including British Columbia. While many British Columbians support the goal of celebrating and encouraging the capacity of Canadians to acquire both official languages (as is indicated by the demand in British Columbia for French language schooling), others oppose federal policies in this regard, seeing them as too costly for the benefits they bring, and preferring that such programs be undertaken at the choice, and expense, of individuals rather than being provided at the general expense of taxpayers.

This fundamental concept of Canada as a bilingual country and multicultural society — which has defined federal policies for at least the past quarter century — is one which will likely spark intense discussion in the context of the constitutional and national unity debate we are entering.

Aboriginal Issues

There can be no question but that the relationship between aboriginal peoples and federal and provincial governments is one of the central concerns currently facing Canadians. The outstanding issues are numerous and complex. Aboriginal people have a long standing and profound sense of grievance, and the vast majority of non-Indian British Columbians feel that justice in the moral, political and economic sense must be done. Whether any individual issue can best be addressed and resolved by way of formal constitutional amendment, or through another process of negotiation, is a matter for determination by aboriginal leadership and governments together.

In British Columbia, consultation between the Provincial Government and the leadership of aboriginal peoples has made it clear that the key outstanding issue for Indian people in British Columbia is the resolution of the land question. In the summer of 1990, the Government revised a policy maintained since Confederation and agreed to join negotiations. It is now participating with the Federal Government and aboriginal leadership in a Tripartite Task Force which will make recommendations on a framework for negotiations towards the resolution of outstanding issues throughout British Columbia.

The Constitution recognizes and affirms aboriginal and treaty rights, including rights which will be acquired in future land claims agreements. It does not, however, include provisions dealing with aboriginal self-government.

In 1987, after four years of formal constitutional reform discussions and four First Ministers' Conferences, Canada's First Ministers and aboriginal leaders failed to reach agreement on constitutional amendments regarding aboriginal self-government. That important issue and others are yet to be resolved and must be carefully considered by British Columbians as they participate in the examination of the Canadian constitutional framework.

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Implications

What do all these factors mean for the structure of Canadian federalism? As a general conclusion, some academic and political observers have identified the need for a greater degree of flexibility in our system. This would help to address the specific and differing needs and desires of the people of the various provinces, as well as to reflect their specific economic, social, demographic and cultural characteristics.

The fact that British Columbia's particular circumstances differ from those of other parts of Canada has led successive British Columbia governments to call for changes to federal institutions to increase flexibility and responsiveness.

British Columbia governments have long called for fundamental reforms of key central institutions such as the Senate, as well as other major decision-making and regulatory bodies which have a major impact on the interests of British Columbians. The aim of such changes would be to ensure more adequate British Columbia representation in national institutions, and a greater provincial role in decision-making in national policy areas, including fiscal, monetary, economic and social policies.

Guiding Principles and Options for Reform

The primary objective of reform should be to devise a constitutional framework which balances the need for economic and political union with the desire for adequate expression of economic, social and cultural diversity. This reform must be based on values and principles held by the citizens of British Columbia. A number of considerations may be weighed in this context.

Considerations

1) Democratic Values

There are a number of democratic values which Canadians clearly support. First, any democratic institution such as the federal Parliament or the British Columbia Legislature must be representative of the people and derive its legitimacy from the mandate given to it by the people. This legitimacy is in large measure derived from the responsiveness of these institutions to the demands of the people. Also, there must be means in a democracy for the public to be involved, and to have influence and control over the actions of its government.

Another dimension of this value is the fundamental importance of ensuring that the rights of the individual are upheld against arbitrary and unjust treatment. The Canadian Charter of Rights and Freedoms, and legislative and judicial guarantees of such rights, demonstrate the progress that has been made on this front in recent years, but some contend that further improvements are required.

A further important feature of a well-functioning democratic system is accountability. That is, there must be means to ensure that the desires of the people are being carried out, and if they are not, there must be means of setting things straight.

Overall, the goal is to make the democratic system as fair and as just as possible. As noted earlier, one of the key sources of opposition to the Meech Lake Accord was that the process did not provide for adequate public input. Consequently, there is growing discussion about concepts such as referendums, or constituent assemblies, as means for ensuring that public views are given expression. This discussion extends beyond constitutional reform topics, to include possible changes to the very working of our system of government. There continues to be wide support for the system of parliamentary democracy, which has worked well over the past two centuries. But considerable debate will no doubt be directed to mechanisms aimed at improving the accountability and responsiveness of that system, in an age where the public is so much better informed and equipped to communicate with each other than at the time of Confederation.

2) Flexibility/Adaptability

The need for flexibility in the institutions and structures of government is another important concept, given the need to adapt quickly and effectively to the rapid change the world is always going through. Constitutions carved in stone and based on past conditions where rapid change was not such a factor are not likely to reflect the needs and priorities of modern democracies. In this sense, there is a distinction to be drawn between fundamental principles, which will not be subject to much change over time, and flexible instruments and mechanisms required to operate effectively in a changing world.

3) Regional Sensitivity and Responsiveness

A country as large and as diverse as Canada brings with it a need for government to take into account the local needs of a region, while simultaneously considering the needs of the country as a whole. The federal system of government was designed to do this. Local matters are controlled locally while broader matters such as defence are controlled nationally. In such a system it is important that there be effective methods and mechanisms to ensure that the central government recognizes, understands and is responsive to the concerns and priorities of specific regions. As mentioned earlier, this need explains calls for reform of central institutions such as the Senate — a long-standing priority for British Columbia and some other provinces.

4) Economic and Social Imperatives

Economic considerations were one of the main motives for Confederation in 1867 and remain so today. Canadians obviously have an interest in maximizing their prosperity and economic security, and expect that their system of government should be designed to contribute to such objectives.

As important as economic considerations are, the Canadian Confederation is more than just an economic union. The institutions of Canadian federalism are also the embodiment of values which we share as Canadians. These values include tolerance for diversity, concern for social justice and respect for human rights and freedoms.

Support for redistribution of resources to provide equity among the regions of Canada has been another enduring Canadian value — as expressed through the constitutional provision regarding equalization programs. In addition, there is widespread consensus among Canadians in favour of essential social programs in areas such as health, education, and welfare, and support for the principle that reasonably comparable levels of such public services should be provided in all regions of Canada.

Efficiency in the delivery of government itself is another key economic principle. In this connection, some argue that changes should be made to eliminate unnecessary duplication and overlap of programs and powers, which have resulted in waste, inefficiency and ineffectiveness.

Another important economic value is that government must act so as to promote the concept of "sustainability". This concept involves the need for fiscal responsibility on the part of government, so that today's actions not foreclose tomorrow's options. Many see the size of public debt as "unsustainable", in the sense that it requires our children to pay tomorrow for what we are getting today, and threatens our ability to sustain the social programs seen as vital by most Canadians.

5) Equality versus Distinctiveness

A critical part of the debate about the Meech Lake Accord was whether all the provinces must be seen as having equal status, or whether the particular differences in circumstances among the provinces could justify some differential treatment legally or constitutionally. In many respects, the provinces are equal — in terms of their legislative powers, for example. In other respects, they are clearly different from each other, as is most obvious in the case of Québec's undoubted "distinctiveness" in terms of language, culture and civil law. The question of how to balance these competing values in an acceptable way is one of the core issues to be addressed in attempting to reshape our federal arrangements.

6) National Unity and Cohesiveness

Most British Columbians see maintenance of Canadian unity as important for both symbolic and practical reasons. Politically, unity is required to enable Canadians to act effectively in the collective good, and to speak with one voice to protect our common interests in the international milieu. Economically, strengthened national unity is required to

reduce trade barriers and ensure free movement of labour across the country.

Underlying all these factors is the need for continued emotional attachment to Canada at the individual level — without which the political and economic rationales lose force. Such a feeling for Canada is the necessary condition for the unity required for our continued existence as a country.

7) "Subsidiarity"

This somewhat awkward term is currently in vogue in the context of European discussions about whether powers should be exercised locally or centrally in the European Community. In a nutshell, the idea is that powers and responsibilities ought to be assigned to the level of government closest to the people — to enhance legitimacy, accountability and responsiveness. Only where — for such reasons as effectiveness and efficiency — powers must be exercised by larger political and economic units, should they be assigned to the central authority. This principle may be of use to Canadians in discussing the redistribution of powers within our own federal system.

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The Government has asked that this paper be prepared to assist British Columbians in reaching their own conclusions concerning revisions to the federal system. In arriving at such conclusions on these issues, British Columbians will recognize that trade-offs and choices between principles and values such as these described above are inevitable in the search for an acceptable balance between sometimes competing interests.

Moving beyond this level, a number of constitutional options may be considered as means or vehicles to achieve a more effective federalism that reflects the values held by the citizens of British Columbia.

The intention of this discussion paper is not to prejudge public opinion by presenting concrete proposals for change, but rather to describe various issues and options for consideration in order to stimulate public debate. The basic decision British Columbians will have to make concerns the form of political structure that will provide an adequate framework of principles, laws, and institutions for Canadians to live with in the future.

Constitutional Options

The alternatives range from various "federal" forms, where ultimate political authority is divided between central and provincial governments, to "confederal" forms where sovereignty resides with the local orders of government, which delegate authority "up" to a common central authority to deal with certain common problems. Of the nine models listed below, (1) to (5) represent different forms of federal systems, (6) to (8) represent different forms of confederal systems, and (9) represents complete separation.

Models such as these are now being discussed actively among constitutional experts — and will likely shape the framework for much broader, more intensive and emotional debate among British Columbians and other Canadians in the months to come. The models presented here are based on papers such as those prepared by Professor Ronald Watts of the Institute for Intergovernmental Relations at Queen's University, in November 1990. We draw heavily on the models described in his paper, with his generous permission.

1) Status Quo

The Canadian federal structure devised in 1867 has for over a century and a quarter proved effective and flexible in adapting to changing conditions. Canadians have exhibited a remarkable knack for "muddling through" serious challenges in the past, and have built an economic, social and political system that has been the envy of much of the

world for its success and stability. Nevertheless, the current circumstances suggest the existing federal structure is unlikely to endure unchanged in the long run. At the very least, public opinion polls suggest that it is no longer acceptable to a majority in Québec, and in addition, is the source of much dissatisfaction not only in Western Canada but also in the Atlantic provinces.

2) "Modernized" Federalism

The division of powers and the structure of central institutions could be revamped and overhauled to better reflect modern conditions. Federal powers could be increased in some areas, for example to ensure the freer movement of people, goods and services. At the same time, current federal jurisdiction over areas where centralization is ineffective or unnecessary could be reassigned to the provinces. A better alignment between taxing authority and spending responsibility could bring about greater accountability and fiscal discipline. Such an approach could result in considerable realignment of powers and responsibilities, but there would be no preconceived bias in favour of either massive decentralization or centralization.

3) Decentralized Federalism

This option would apply the principle of "subsidiarity" to transfer many programs and responsibilities and certain taxing powers from the federal to the provincial governments. Not only could this alternative reduce public sector duplication and overlap, it would also be aimed at increasing responsiveness and accountability by providing government as close to the people as possible.

It is likely, however, that many will object to such a model because they feel that a central government with substantially reduced authority would find it more difficult to redistribute resources through regional development and equalization programs, or to institute national standards for programs. A critical issue would be to identify the degree of central jurisdiction required to maintain an effective federal system. The current debate over constitutional change seems to be leaning in the direction of considerable decentralization, and the acceptability of such an approach to British Columbians and other Canadians will be a key issue for public discussion in the months to come.

4) "Asymmetrical" Federalism

Many constitutional experts have been examining models in which the powers of the provinces are not equal — this is called "asymmetrical" federalism by some. There is already some degree of asymmetry in the Constitution — British Columbia's own "Terms of Confederation" are but an example. It is argued by some that certain forms of "asymmetrical" federalism could enable the concerns of centralists outside Québec, and the views of those subscribing to the principle of "equality" of the provinces, to be reconciled with the desire in Québec for greater powers.

One way to do this is to design a more asymmetrical federal structure in practice, while maintaining the principle of constitutional equality in law. This would entail models such as "opt-out federalism", starting with a highly centralized federal structure, or "opt-in federalism", starting from a position of strong provincial governments. Such models would place all provincial governments on an equal footing legally and constitutionally — in terms of their ability to choose which powers to exercise. But, depending on the choices made by individual provinces, there could in practice be some "asymmetry". This, too, already exists to a degree, as Québec operates its own pension plan, and Alberta and Québec have exercised the option to run slightly different family allowance programs.

Some dismiss this approach on the grounds that it would result in a balkanized or "checkerboard" Canada. As well, it should be recalled that efforts to increase even moderately the degree of asymmetry within Canada,

as was proposed in the Meech Lake Accord, failed to receive the support required for ratification. The question may in the end come down to one of whether, when faced with the potential break up of the country, a more radical asymmetry might be acceptable.

5) "Bipolar" Federalism

This model involves a federation consisting of Québec on the one hand, and the rest of Canada on the other — the latter taking either a unitary form or existing as a federation within a federation. Experience elsewhere suggests bipolar federations are notoriously unstable. Furthermore, the difference in population between the two units would raise major problems in arriving at agreement on appropriate representation within central institutions.

6) Confederalism of Regions

Another alternative would be to create a loose confederation of four or five regions each constituting a single unit. The grouping of smaller provinces into larger units would enable each to match the capacity of Ontario and Québec to exert political influence. This solution would of course depend upon the willingness of smaller provinces to join forces. There has been some public discussion of such a possibility in the Atlantic provinces in recent months. Options such as this were proposed by earlier governments in British Columbia in the 1960s and 1970s, but did not generate support. Under such an option, the central government would be assigned responsibility for coordinating policy relating to economic, monetary and other agreed policy areas, but the general presumption would be that powers would reside at the regional level unless delegated up to the central government.

7) "Sovereignty Association"

This solution, advocated in various forms and under various names by many in Québec, would take the form of a loose confederation consisting of Québec and the rest of Canada. The confederal superstructure would mainly be responsible for the regulation of a common market and currency, and the provision of common armed forces. Like a bipolar federation, sovereignty association is subject to the same questions of representation and stability. A further possible disadvantage is that the operation of a superstructure with only two constituent units is almost certain to produce deadlocks, thus hampering international competitiveness. When suggested in the past, support outside Québec for such a model has been very low, and polls suggest that this has not changed recently.

8) Common Market

In the Canadian context, such a model could consist of anywhere from five to ten regions, with only the minimal central structures and powers necessary for a common market and possibly a monetary union. While avoiding the problems of a bipolar federation, a common market may be seen by many as being incapable of meeting the desire of many Canadians for coordinated national action in a range of policy areas.

9) Complete Economic and Political Separation

This solution is viewed by some as intellectually and politically "cleaner" than many of the more complex alternatives listed above. It raises, of course, very serious questions of its own: how to deal with the allocation of assets and liabilities, the adjustment of boundaries, and of transportation corridors between Ontario and the Atlantic provinces. For the rest of Canada, it raises the spectre of complete domination by Ontario (which would represent almost half the remaining population), or potential further political disintegration of the remaining elements of Canada.

Major Issues For Resolution

Two of the overriding questions which are likely to dominate the political agenda over the next several months are "what should government do?", and, having defined the scope of public sector activity, "who should do what?". In that respect, the following are some of the questions British Columbians might consider in thinking about the country's future.

What Should Government Do?

The fiscal situation, combined with current demographic trends, have led to calls for a reappraisal of the scope of public sector activities. There are increasing signs of support for the conclusion that these factors require clear limits to be placed on the taxing, spending and regulatory authority of government — because it seems apparent that expectations regarding ever-expanding program demands simply cannot be sustained by the economy.

That said, there is overwhelming support for both the principles underlying and the programs embodying key Canadian values of fairness, equity and providing assistance for those unable to help themselves.

Both these assertions appear to transcend partisan politics in Canada, although there is, of course, much room for dispute over the most effective and appropriate means to solve the problems and respond to the needs and values of Canadians.

Who Should Do What?

The models described in the last section indicate the wide range of possible alternatives to the current division of powers. The following questions are intended to stimulate public discussion of possible approaches to the existing division of powers:

1) Clear Divisions of Powers Between Orders of Government

In what areas should a clear division of responsibilities be established (or re-established)? Is it realistic to return to the "watertight compartments" of 1867 in some, if not in all areas, in the face of an increasingly complex and interdependent world?

2) Coordinated Federalism

In 1985, the Macdonald Commission called for a network of formal coordinating mechanisms to oversee key policy areas, and formal interprovincial agreements to eliminate and adjudicate disputes over interprovincial trade barriers and subsidy competition aimed at attracting new investment. In what areas of jurisdiction would the public interest be best served by some measure of formal federal-provincial cooperative action? What sorts of mechanisms should be designed to provide effectiveness, efficiency, accountability, responsiveness and flexibility? Should there be greater formal coordination, not just between the federal and provincial governments, but also among the provinces, to share information, facilities and expertise?

3) Decentralization

Which government programs are most effective when adapted to local conditions and run by provincial and local governments rather than by the central government? How would the desire to ensure a reasonably simi-

lar level of services in all parts of Canada be met in such circumstances? Is there a concern that national standards such as portability and accessibility would be undermined and, if so, are there alternative means for addressing those values? How far can such decentralization go without calling into question the basic rationale for staying together as a country?

4) Centralization

Which government programs are most effective when uniform standards are applied across the country? Is exclusive federal legislation and federal authority necessary to develop such standards? How are concerns about regional sensitivity and flexibility to be met within such a system? What kinds of changes may be required to central institutions to ensure that regional interests are adequately reflected?

5) Asymmetrical Federalism

Is formal equality of provinces seen as an inviolable principle? What are the limits of provincial equality? Is it feasible to allow Québec relative autonomy within a centralized federal structure? More broadly, is a model whereby individual provinces may exercise different powers an acceptable possibility, on terms such as those outlined earlier in the description of potential asymmetrical models?

6) Fiscally Responsible Federalism

Should there be a more direct alignment between taxation powers and government expenditure (i.e. the government that is responsible for an area also has the responsibility to raise taxes for those programs)? To establish this, should current transfer payments be re-examined, or the federal spending power be strictly limited, or eliminated? Should statutory or constitutional limits be placed on governments' ability to spend, to tax, to go into debt?

7) Responsive and Accountable Federalism

Do the current institutions of parliamentary democracy and intergovernmental relations adequately reflect the need for responsiveness and accountability? Should such devices as referendums or initiatives be introduced, or expanded when already in place? How can the need to arrive at workable arrangements on matters of policy through such intergovernmental mechanisms as executive federalism be made to square with the desire for more openness and public participation?

Is the protection offered to individual or collective rights through current legal and constitutional provisions adequate, and, if not, how should it be enhanced? How do the desires of distinct groups within the population — aboriginal people, women, linguistic and cultural minorities, citizens of northern territories, the populations of the various provinces — receive the kind of recognition they perceive as needed, while still maintaining principles of equality, equity and national unity?

Conclusion

Where Do We Go From Here?

The issue is not "whether we should change" — for change is a given. The issue is "how must we change".

It is clear that in addressing such questions, the issues involved go far beyond a "Québec question", whereby other Canadians are required to respond to proposals put forward by one province. Instead, the issue is a "Canadian question", whereby we must come to a renewed consensus on how we want to live together and what institutions we need to do so, in the global context of rapid change and increased competitiveness.

How Do We Get There?

In British Columbia, public involvement in discussion and decision on such fundamental issues is being sought. The first step is this paper. It will be followed by others — aimed at giving British Columbians background information and analysis on which to base their own thinking. As well, British Columbians from various walks of life have been invited to share their own perspectives on these issues, and these thoughts will be given wide distribution by the Government in the coming weeks. Indeed, an open invitation has been offered to all British Columbians to provide their views, their thoughts, and their recommendations to the Cabinet Committee on Confederation formed last year.

In the national debate that is shortly to begin British Columbia must be ready to take an active role in defining the future. This paper is intended to assist in launching and focussing the dialogue in British Columbia, as we prepare ourselves to face that future.

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March 1991